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# COASTWISE TOLL EXEMPTION, TRADE DISCRIMINATION, AND POSSIBLE EVASION OF LAW

BY EMORY R. JOHNSON

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It is assumed by those who favor the policy of exemption from the payment of Panama tolls of the men and companies who own the ships that serve the coastwise trade, that this exemption can be no discrimination against the owners and users of ships under foreign flags, because only vessels of American ownership and enrolment can carry goods from one port of the United States to another. Will the exemption from Panama tolls of ships owned by citizens of the United States, or, more accurately speaking, by the coastwise steamship corporations chartered under the laws of some one of the States of the United States, work a discrimination against "the citizens or subjects" of any nation?

The four specific questions involved are: Does Panama toll exemption for the owners of ships serving the trade between the *two seaboards of the United States*, and toll payment by the owners of ships serving the trade between the *two seaboards of Canada and Mexico*, discriminate against any "nation or its citizens or subjects"?

Does toll exemption for the owners of ships serving the *trade between the eastern seaboard of the United States and our west coast*, and toll payment by the owners of ships serving the *trade between European countries and the west coast of the United States*, result in "no discrimination against any such nation or its citizens or subjects in respect of the conditions or charges of traffic or otherwise"?

Does Panama toll exemption for the owners of ships taking goods from *New York* to *San Francisco* or to *Seattle* for reconsignment and export thence to *the Orient*, and the

payment of tolls by the owners of ships serving the trade *from Europe to the Orient*, discriminate against the citizens or subjects of European countries?

Does Panama toll exemption for the owners of ships carrying from Seattle or San Francisco to New York *goods that have been brought to the west coast of the United States from the Orient*, and the payment of tolls by vessels carrying *goods directly from the Orient and Australia to New York* discriminate against the foreign carriers and merchants?

The mere statement of these questions suggests affirmative answers. It will be well to inquire whether the questions represent merely theoretical possibilities or practical probabilities—to examine the trade referred to in these questions, to see whether the competition between those who pay tolls and those who do not will result in discrimination. The following illustrations are intended to be merely illustrative and not to include all phases of trade.

Lumber and fish are now shipped from British Columbia and from Washington and Oregon to the eastern seaboard of the United States. After the canal is opened the trade will be large and the competition between American and Canadian traders will be active. Canadian producers will be served by, or (particularly in lumber shipments) will use, vessels that pay tolls; while American traders will ship by vessels that do not pay canal charges. In so far as goods are shipped by vessels that are chartered by the traders and producers, the costs of securing transportation to the eastern seaboard of the United States *via* the Panama Canal will be affected by the payment, or exemption from payment, of tolls; and the Canadian citizens will suffer a discrimination “in respect of the conditions or charges of traffic.”

The steel required in the western part of the United States for the erection of buildings and the construction of bridges, railroads, and irrigation works can be shipped by the United States Steel Corporation, the Bethlehem Steel Company, the American Bridge Company, the Maryland Steel Works, and other American corporations in chartered vessels—of course under the American flag—that will not be required to pay tolls at Panama; while the British, German, Belgian, and other possible European producers of steel in order to get their goods to the western part of the United States in competition with American producers will be obliged to employ

ships subject to Panama Canal tolls. It is certain "that the citizens or subjects" of European countries will feel that the payment of tolls by them and the non-payment of such charges by their American competitors establishes a discrimination "in respect of the conditions or charges of traffic."

At the present time a considerable volume of trade originating in the southeastern and eastern parts of the United States is carried by rail to the west coast of the United States and exported thence to the Orient and Australasia. Some of this export traffic is now also carried by way of the Isthmus of Tehuantepec and the Isthmus of Panama. After the canal is opened a much-increased volume of shipments from the southeastern and eastern sections of the United States will be taken from the Atlantic and Gulf ports of the United States by all-water routes *via* the Panama Canal to trans-Pacific countries. It is possible that a greater or less share of these shipments will be consigned by the merchants at our Atlantic and Gulf ports to American merchants in San Francisco and other west-coast ports, and the shipments between the two seaboard may be by coastwise steamers whose owners are exempted from the payment of canal tolls. When the goods reach the west coast of the United States they, together with goods that have been brought to those ports by rail, will be reconsigned to their foreign destination in the Orient and Australasia. Shipments from our eastern seaboard to the Orient by way of west-coast ports will not be roundabout or indirect, because San Francisco and Puget Sound ports lie close to the short route from the canal to Japan, China, and the Philippines.

If goods are shipped from New York to the Orient without being consigned to a west-coast American port, the vessels transporting the goods, whether the vessels be owned by Americans or by foreigners, will have to pay canal tolls. Foreign-owned vessels engaged in our foreign trade from the eastern seaboard of the United States to trans-Pacific countries will have to pay tolls; whereas the owners of the vessels which carry similar goods from our eastern to our western seaboard for reconsignment at a west-coast American port to a foreign destination will avoid the payment of tolls. Thus, in competing for the same trade the owners of American ships will have an advantage which the owners of foreign vessels will be denied.

Goods shipped from an eastern port of the United States, such as New York, to San Francisco or Seattle for reconsignment to the Orient will have to be transferred from one ship to another at the west-coast port unless the ship after reaching San Francisco or Seattle should be despatched to the Orient, as it can be if it is a vessel registered for the foreign trade. The fact that it is a vessel registered for the foreign trade would not prevent its being used in the coastwise trade between our two seaboard. If an American vessel presents itself at the canal with a clearance from New York to San Francisco and has aboard it only goods shipped from New York to other American ports, the vessel would presumably pass through the canal toll free. If the same vessel, together with its cargo, was later despatched from San Francisco to the Orient, no penalty would be incurred. The Panama Canal Act exempting coastwise shipping from the payment of tolls would not have been violated, but it would have been evaded. If the goods taken by the coastwise vessel from New York to San Francisco were unloaded and taken thence to the Orient by another vessel, the Panama Canal Act would be neither violated nor evaded, and yet trade between New York and the Orient would have been carried by vessels exempted from the payment of tolls.

Whether trade between the eastern part of the United States and the Orient will be carried on by way of some west-coast American port or directly without reconsignment *en route* will, if the goods are transferred at the port of reconsignment, depend upon the cost of such transfer as compared with the amount of tolls payable at Panama. If goods are not rehandled at the western port of reconsignment, the choice between lines operated directly from the eastern seaboard of the United States to the Orient and vessels operated *via* our west-coast ports will depend upon the relative facilities and rates *via* the alternative routes. Vessels owned by foreign citizens can participate only in the service of transportation by direct routes. They will have tolls to pay. Vessels owned by American citizens may engage in the service *via* the port of transshipment, and no tolls will have to be paid.

For the commerce with the Orient and Australia there is now active competition between the eastern part of the United States and Europe. American producers and merchants are constantly bidding against British manufac-

turers and traders for the Oriental and Australasian trade. The Oriental commerce is now handled almost entirely by way of the Suez Canal. The Australian shipments are more largely by way of the Cape of Good Hope. A part of the trade of the eastern seaboard of the United States with the Orient is now carried on by way of Great Britain and Germany, between which countries and the Orient there is a larger volume of shipping than there is between our eastern seaboard and trans-Pacific countries. With the opening of the Panama Canal, it is not probable that much, if any, of the commerce of the United States with countries beyond the Pacific will be handled by way of Europe. On the contrary, there are reasons for believing that it will be economical to send goods from Europe to New York for transshipment to the Orient, and that New York will become a depot for the handling of European-Oriental trade such as London and Hamburg are now for a part of the commerce of the United States with the Orient.

Freight-rates westbound across the north Atlantic are low, because a much larger tonnage moves in the opposite direction. Our exports to Europe are heavier and bulkier than our imports, and vessels are glad to take traffic from Europe to the United States at relatively low rates. After the Panama Canal is opened there will be a large tonnage of shipping serving the trade between our eastern and western seaboard, and facilities will presumably exist for frequent and economical shipment from New York and other eastern American ports to the west coast of the United States. European goods, both non-dutiable and dutiable, can be entered at New York, and shipped by a toll-free coastwise vessel to a merchant in San Francisco. It may be found profitable to enter non-dutiable European goods at New York, then ship them to some merchant on our west coast for reconsignment or reshipment to the Orient. It will apparently be possible to make this reconsignment without transfer or handling of the cargo at the west-coast port.

Similarly, goods from the Orient to New York can be entered at San Francisco or some other west-coast port and then be put aboard a ship owned by one of the coastwise carriers and sent on to New York or some other eastern port of the United States. Undoubtedly a good deal of the traffic from the Orient to the eastern United States will be transhipped at San Francisco, because there will be lines across

the north Pacific not having services through the canal to the Atlantic ports. The goods brought to the west coast from the Orient will be brought eastward to the central and eastern sections of the United States, partly by railroad lines and partly by coastwise steamship lines. Citizens of foreign countries operating ships serving the trade from the Orient directly to the eastern seaboard of the United States in competition with the ships serving the trade carried by way of west-coast ports will have Panama Canal tolls to pay, whereas their competitors will be relieved from those tolls.

The four discriminations thus far referred to are specific and connected with the trade between particular sections. A broader question of discrimination was raised by the British Government in the note of protest which it submitted to this Government the 14th of November, 1912. In that note Sir Edward Grey refers to the stipulation in the Hay-Pauncefote Treaty that the conditions and charges of traffic through the Panama Canal "shall be just and equitable," and he states that

unless the whole volume of shipping which passes through the canal . . . is taken into account, there are no means of determining whether the tolls chargeable upon a vessel represent that vessel's fair proportion of the current expenditure properly chargeable against the canal—that is to say, interest on the capital expended in construction and the cost of operation and maintenance.

It is also contended by Sir Edward Grey that

any system by which particular vessels or classes of vessels were exempted from the payment of tolls would not comply with the stipulations of the Treaty that the canal should be open on terms of entire equality and that the charges should be just and equitable.

Will or will not the exemption of the ships owned by the American coastwise steamship corporations increase the tolls to be paid by ships owned by citizens or subjects of foreign countries? Tolls are to be levied and collected at Panama presumably to pay the expenses for running and maintaining the canal and for meeting the interest charges on the funds invested in the canal; and it is to be expected that it will be the policy of the United States to make the canal commercially self-supporting, if the traffic is large enough to secure the requisite revenues without unduly restricting the usefulness of the waterway. It will not be the policy of the United States to obtain profits in excess of the

revenues required to meet operating, maintenance, interest, and amortization charges; but, if the traffic proves to be as large as it seems probable that it will be, the policy of the United States will doubtless be to have the canal carry itself commercially—to limit the canal expenses borne by the general taxpayers of the United States to the military and naval outlays required for the defense of the canal and for the maintenance, at the isthmus, of forts and naval bases.

If it shall be, as it ought to be, the policy of the Government to make the canal commercially self-supporting, it is obvious that the rate of tolls imposed must be affected by the tonnage upon which the charges are levied; and that, if the toll-bearing tonnage is reduced by the exemption of the large volume of shipping owned by the individuals and corporations engaged in the coastwise trade, the rate of charges payable by the owners of American ships in the foreign trade and by the citizens owning vessels under foreign flags must be higher than the rate would be if all vessels using the canal were required to pay tolls.

Another fact to be borne in mind is that the toll-exemption clause of the Panama Canal Act will not only discriminate against the trade and shipping in which citizens or subjects of other countries are interested; it will also place a handicap upon a part of our own trade. Most of the trade of Central America and much of the commerce of Mexico is handled through the west-coast ports of those countries. After the canal is opened there will be a large volume of shipping moving between the two seaboard of the United States directly past west-coast Central American and Mexican ports. Those countries are close to the United States. Their exports are needed in our country. Our industries should supply Central America and Mexico with imports. If our ships engaged in trade between the two seaboard of the United States are permitted to stop *en route* at Central American and Mexican ports to discharge and take on cargo, it may be possible to transfer the trade of those countries from British, German, and other European traders to American merchants and to give ships owned by the citizens of the United States the traffic which is now, and under the terms of the Panama Canal Act must continue to be, handled mainly by ships owned by foreign citizens.

The partial statement here made of the handicap that will be placed upon the "citizens or subjects" of other nations



who own ships that serve our foreign trade and the commerce of foreign nations with one another, by exempting from Panama tolls the individuals and corporations owning or chartering vessels that carry our domestic products and our imported goods between our Atlantic and Pacific seaboards, goes far to explain why there was such earnest advocacy of the policy of exempting from toll payments the individuals who own coastwise ships, the large shippers and traders who charter vessels, and the corporations who operate steamship lines. The discrimination in favor of certain classes of American traders, in favor of the producers whose output is large enough to enable them to ship their products in full-vessel cargoes, and in favor of the corporations owning the coastwise steamship lines, is real, and naturally is desired by the prospective beneficiaries.

The coastwise toll-exemption clause of the Panama Canal Act grants an unjustifiable subsidy. The taxpayers of the country who have paid for the Panama Canal are entitled to receive reasonable tolls from the individuals and corporations who use the canal and derive profit therefrom. When the general public clearly understands what is involved in exempting the owners and charterers of coastwise ships from toll payments, it seems certain that the Canal Act of August 24, 1912, must be amended by striking out the toll-exemption clause.

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